

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2091 of 1989

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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FAG PRECISION BEARINGS LTD

Versus

MOHANLAL J SHARMA

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Appearance:

MR GANDHI FOR MR KS NANAVATI for Petitioner

MR JIVANLAL G SHAH for Respondent No. 1

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 12/07/96

ORAL JUDGMENT ;

1. This Special Civil Application is directed against the order dated 10-1-89 passed below Exh.11 in Application (IT) No.136 of 1986 by the Industrial Tribunal, Baroda.

2. The respondent herein was serving as an Operator

in the petitioner-Company. He was placed under suspension on 3-4-86. After the inquiry, he was dismissed from the service on 22-11-86. The petitioner-Company had applied for approval under S.33(2)(b) of the Industrial Disputes Act. The respondent-workman moved an application that the approval proceedings may not be allowed to proceed and approval may not be granted because he was a protected workman. Thereupon, the impugned order dated 10-1-89 was passed on respondent's Application Exh. 11 allowing the same on the basis that the respondent was a protected workman. The learned counsel for the petitioner has placed on record a copy of the order dated 21-1-88 in Case No.11 of 1986 whereby the list of the protected workmen for the year 1986-87 has been declared by the Assistant Labour Commissioner, Baroda. In this order, the name of the respondent-workman does not figure as a protected workman. I called upon the learned counsel for the respondent Mr. Shah as to how the Industrial Tribunal, Baroda while passing the order dated 10-1-89 proceeded on the basis that the respondent was a protected workman. The only reply which has been given by Mr. Shah is that the application seeking the declaration with regard to the respondent as a protected workman was pending at the time when the dismissal order was passed and, therefore, even if he is not declared as a protected workman, the order of dismissal could not be passed against him because the application seeking declaration with regard to the respondent as a protected workman was pending. It was further argued by Mr. Shah that in the Conciliation proceedings, the Conciliation Officer had passed an order that the Company ought not to have dismissed the services of the respondent during the pendency of the application and against that order, Special Civil Application filed by the petitioner-Company is pending and so also the impugned order dated 10-1-89 passed by the Industrial Tribunal should not be disturbed.

3. It may also be pointed out that on behalf of the petitioner-Company Mr. Gandhi had offered that the entire dispute may be settled with the respondent-workman by paying a sum of Rs.1.5 lac, but this offer made by and on behalf of the Company is not acceptable to the respondent-workman, who is present in the Court and on whose behalf Mr. Shah after taking instructions from him has submitted that this offer is not acceptable to him.

4. I have heard learned counsel and have perused the impugned order dated 10-1-89 as also the order dated 21-1-88 passed by the Assistant Labour Commissioner, Baroda. There is nothing on record to show that the

respondent-workman was a protected workman. Merely because the application seeking a declaration in his favour was pending and that the Conciliation Officer had observed that during the pendency of such application the Company ought not to have dismissed the respondent from the services, it can not be a basis for declining the approval. I find that the order dated 10-1-89 suffers from an error of fact apparent on the face of the record inasmuch as in absence of any declaration with regard to the respondent-workman that he was a protected workman, the Industrial Tribunal has proceeded on the basis that the respondent was a protected workman and the order dated 10-1-89 passed by the Industrial Tribunal deserves to be set aside on this ground alone.

5. Accordingly this Special Civil Application is allowed. The order dated 10-1-89 is hereby quashed and set aside. However, it is observed that this order will not come in the way of the parties if they still want to settle the matter amongst themselves and nothing said or observed in this order will come in the way of the respondent in any proceedings which may be pending before any Court. Rule is made absolute accordingly with no order as to costs.